

STATE OF MICHIGAN  
COURT OF APPEALS

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DENNIS J. HAUT,

Plaintiff-Appellant,

v

STANDISH-STERLING COMMUNITY  
SCHOOL DISTRICT and CLAUDE INCH,

Defendants-Appellees.

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UNPUBLISHED

March 23, 2006

No. 264244

Arenac Circuit Court

LC No. 04-008969-CK

Before: Bandstra, P.J., and White and Fort Hood, JJ.

PER CURIAM.

In this action involving claims for breach of contract and violations of MCL 380.1229, plaintiff appeals as of right from the circuit court's order granting defendant's motion for summary disposition under MCR 2.116(C)(10). We reverse.

This Court reviews de novo a circuit court's decision with regard to a motion for summary disposition. *Trost v Buckstop Lure Co*, 249 Mich App 580, 583; 644 NW2d 54 (2002). A motion under MCR 2.116(C)(10) tests the factual support for a claim. *Lewis v LeGrow*, 258 Mich App 175, 192; 670 NW2d 675 (2003). In reviewing a motion under MCR 2.116(C)(10), this Court "must consider the available pleadings, affidavits, depositions, and other documentary evidence in a light most favorable to the nonmoving party and determine whether the moving party was entitled to judgment as a matter of law." *Michigan Ed Employees Mut Ins Co v Turow*, 242 Mich App 112, 114; 617 NW2d 725 (2000), quoting *Unisys Corp v Comm'r of Ins*, 236 Mich App 686, 689; 601 NW2d 155 (1999).

Plaintiff alleges that defendants violated MCL 380.1229, which provides, in pertinent part:

(2) The board of a school district or intermediate school district may employ assistant superintendents, principals, assistant principals, guidance directors, and other administrators who do not assume tenure in that position under Act No. 4 of the Public Acts of the Extra Session of 1937, being sections 38.71 to 38.191 of the Michigan Compiled Laws. The employment shall be by written contract. The term of the employment contract shall be fixed by the board, not to exceed 3 years. *The board shall prescribe the duties of a person described in this subsection. If written notice of nonrenewal of the contract of a*

*person described in this subsection is not given at least 60 days before the termination date of the contract, the contract is renewed for an additional 1-year period.*

(3) A notification of nonrenewal of contract of a person described in subsection (2) may be given only for a reason that is not arbitrary or capricious. *The board shall not issue a notice of nonrenewal under this section unless the affected person has been provided with not less than 30 days' advance notice that the board is considering the nonrenewal together with a written statement of the reasons the board is considering the nonrenewal.* After the issuance of the written statement, but before the nonrenewal statement is issued, the affected person shall be given the opportunity to meet with not less than a majority of the board to discuss the reasons stated in the written statement. The meeting shall be open to the public or a closed session, as the affected person elects under section 8 of the open meetings act, Act No. 267 of the Public Acts of 1976, being section 15.268 of the Michigan Compiled Laws. If the board fails to provide for a meeting with the board, or if a court finds that the reason for nonrenewal is arbitrary or capricious, the affected person's contract is renewed for an additional 1-year period. This subsection does not apply to the nonrenewal of the contract of a superintendent of schools described in subsection (1). [Emphasis added.]

The purpose of this statute is to protect administrators from being arbitrarily removed from their administrative positions. *Sanders v Delton Kellogg Schools*, 453 Mich 483, 492; 556 NW2d 467 (1996). By its express terms, the notice and meeting protections of the statute apply only to “nonrenewals” of a contract. As used in the statute, the term “nonrenewal” means either (1) termination from an administrative position, or (2) reassignment from an administrative position to a nonadministrative position. *Id.* In this case, plaintiff claims that a nonrenewal within the meaning of § 1229 occurred. We conclude that a question of fact remained on this issue.

Viewed in a light most favorable to plaintiff, documentary evidence submitted below established that defendants never provided plaintiff with a written description of the alleged position—a position which had never existed before. Plaintiff was told to report to this “new position” in June of 2004, yet the position remained undefined and not formalized. Although plaintiff was told that he would receive the same salary and benefits that he received as a school principal, were he to accept this “position,” this is not dispositive nor does it preclude the existence of a question of fact whether defendants’ actions constituted reassigning plaintiff from an administrative to a nonadministrative position. We conclude that a question of fact remained on this issue.

We also agree with plaintiff that the circuit court improperly dismissed his breach of contract claim. The contract governing plaintiff’s employment, entitled Standish-Sterling Community School District Administrator’s Contract of Employment, stated in pertinent part:

**1. Term of Employment.** The Board of Education agrees to employ the Administrator in an administrative capacity for the term of two (2) years from July 1, 2003 to June 30, 2005. . . .

\* \* \*

3. **Right to Reassign.** The Administrator shall be subject to reassignment and/or transfer into a new or different administrative . . . at the sole discretion of the Superintendent. In the event that the Administrator is reassigned to a different position, they [sic] will be provided, upon request, with a written statement of the reasons for the transfer. . . .

To the extent that plaintiff's breach of contract claim is based on his contention that he was reassigned to a nonadministrative position, it has been addressed above. Plaintiff also maintains that a viable breach of contract claim exists because defendants failed to provide him with a written statement of the reason for the reassignment, as required by the contract. The evidence established that defendants failed to provide plaintiff with a written statement of the reason for the reassignment, and plaintiff testified that he requested several times that defendants provide him with the reason(s).

We disagree with defendant's contention that plaintiff cannot maintain a breach of contract claim because plaintiff "outright refused to report to the administrative assignment and subsequently decided to voluntarily retire from any employment with Standish." On June 11, 2004, plaintiff wrote Superintendent Inch:

The contract I signed with the Standish-Sterling School District was to be the high school principal. I have given the last eighteen years of my life to this district and *have never been told or given any reason for this transfer in writing.* With superior evaluations every year, I cannot find any reason for such a move. Therefore, I expect the board to honor my contract as principal of the school. [Emphasis added.]

No written explanation was provided, but Superintendent Inch called plaintiff and instructed him to report to the alleged newly created position on June 21<sup>st</sup>. Plaintiff e-mailed Inch on February 15<sup>th</sup> stating:

If you read my letter from last week, I believe it states I will not be taking this newly created position. Therefore, I will not be reporting to Standish Elementary this Monday, June 21, 2004, as you indicated in your voice mail. I believe I have no other choice but to stay home and take my chances at a higher level.

While Inch interpreted plaintiff's communication as a resignation, a reasonable fact-finder could conclude that plaintiff did not resign, but rather, chose to rest on the absence of a written explanation or job description and to pursue remedies at a level higher than Inch and the Board. In fact, plaintiff filed this lawsuit on June 21, 2004.

We conclude that a genuine issue of fact remained whether plaintiff was reassigned from an administrative to a non-administrative position, and whether defendants breached plaintiff's contract.

We reverse the circuit court's grant of summary disposition to defendants, and remand for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Richard A. Bandstra

/s/ Helene N. White

/s/ Karen M. Fort Hood